

# **Plaintiffs' Exhibit 169**

Page 1

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES, et al., :  
:  
Plaintiff, :  
:  
vs. : Case No.:  
:  
GOOGLE, LLC, :  
:  
Defendant. :

VIDEOTAPED DEPOSITION OF ALLEN OWENS, JR.

DATE: September 28, 2023  
TIME: 9:36 a.m.  
LOCATION: Paul, Weiss, Rifkind,  
Wharton & Garrison LLP  
2001 K Street, Northwest  
Washington, D.C. 20006-1047

REPORTED BY: Shari R. Broussard, RPR, CSR  
Reporter, Notary

Job No. CS6118347

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<p>1 service that VMLY&amp;R shall do under this task 2 order, correct?</p> <p>3 MR. PRITCHETT: Objection. Form.</p> <p>4 THE WITNESS: Correct. This lays out 5 the -- the purchasing that is being requested.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q Okay. And this task order does not set 8 a price for the advertising that Young &amp; Rubicam 9 shall research, negotiate, and purchase, correct?</p> <p>10 MR. PRITCHETT: Objection. Form, 11 foundation.</p> <p>12 THE WITNESS: That is correct.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q It simply sets a ceiling that they 15 cannot exceed; is that correct?</p> <p>16 MR. PRITCHETT: Objection. Form, 17 foundation.</p> <p>18 THE WITNESS: It does set the ceiling 19 they cannot exceed and it does list the 20 approximate number of impressions expected to get 21 for that.</p> <p>22 BY MS. GOODMAN:</p>	<p>1 estimates in scope, number three here, correct?</p> <p>2 MR. PRITCHETT: Objection. Form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q And the Navy does not tell VMLY&amp;R how to 6 purchase ads, correct?</p> <p>7 MR. PRITCHETT: Objection. Form, 8 foundation.</p> <p>9 THE WITNESS: The Navy does not tell the 10 contractor how to perform the job. As stated 11 earlier, that -- that would be improper.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q And, therefore, you do not tell the 14 contractor how to purchase the advertising 15 requested that they go purchase in scope three?</p> <p>16 MR. PRITCHETT: Objection. Form, 17 foundation.</p> <p>18 THE WITNESS: In scope three we lay out 19 the items that we are looking to purchase and then 20 based on a follow-on recommended plan is where we 21 lay out the specifics of what we're looking to 22 purchase. However, as you stated, we then do not</p>
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<p>1 Q And that's an estimate, correct?</p> <p>2 A Due to the nature of the -- the -- the 3 market price changes, then yes, that's an -- that 4 is an estimate.</p> <p>5 Q Okay. And the task order does not set a 6 quantity of advertising to buy, correct?</p> <p>7 MR. PRITCHETT: Objection. Form.</p> <p>8 THE WITNESS: It does provide estimated 9 quantities of what's expected.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q Of the impressions; is that what you're 12 referencing?</p> <p>13 A For -- for the top two major bullets of 14 digital display and online video as well as for 15 paid search, yes -- or, excuse me, paid social, 16 yes. And then for the remaining items it lists 17 out the approximate number of leads expected to be 18 garnered for the investment.</p> <p>19 Q Okay. And those are --</p> <p>20 A Again, those are estimates.</p> <p>21 Q That's my next question.</p> <p>22 So you're looking at all of the</p>	<p>1 tell them how to go and purchase them.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q Okay. Does the Navy tell the contractor 4 what vendors to purchase advertising from?</p> <p>5 MR. PRITCHETT: Objection. Form, 6 foundation.</p> <p>7 THE WITNESS: In the form of an approved 8 reco deck or an approved recommended plan, the 9 Navy does. The Navy asks for a recommended plan 10 and relies on the experience and expertise of the 11 ad agency to provide a recommended plan, but they 12 do not purchase it until the Navy has approved the 13 plan.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q And under the contract and task orders 16 for the contracts that we've been talking here -- 17 about here today between the Navy and VMLY&amp;R, 18 VMLY&amp;R uses a subcontractor to purchase ads, 19 correct?</p> <p>20 MR. PRITCHETT: Objection. Form, 21 foundation.</p> <p>22 THE WITNESS: Based on my discussions</p>

13 (Pages 46 - 49)

<p style="text-align: right;">Page 50</p> <p>1 with the FLC contracting officer, the term 2 "affiliate" was used to describe WaveMaker, the 3 one who purchases the ads for Navy. 4 BY MS. GOODMAN: 5 Q I see. So rather than describing 6 WaveMaker as a subcontractor, is it the Navy's 7 position that the more appropriate way to describe 8 them is affiliate? 9 MR. PRITCHETT: Objection. Form. 10 THE WITNESS: Again, based on my 11 conversations with FLC, yes. 12 BY MS. GOODMAN: 13 Q And what is FLC? 14 A The Fleet Logistics Center, the one who 15 does contracts for the Navy. 16 Q Okay. And there's no contract between 17 Navy and WaveMaker, correct? 18 MR. PRITCHETT: Objection. Form, 19 foundation. 20 THE WITNESS: The -- the marketing and 21 -- the only marketing and advertising contract 22 Navy has is with VMLY&amp;R.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Do you know -- does the Navy know how 2 WaveMaker makes purchases of ads for the Navy 3 under the contracts we've been discussing? 4 MR. PRITCHETT: Objection. Form. 5 THE WITNESS: So the Navy tells them 6 which ads or which -- approves a plan which lays 7 out which vendors to buy from, but we do not tell 8 them what methods to employ to purchase those, we 9 rely on their expertise. 10 BY MS. GOODMAN: 11 Q And so does the Navy know how WaveMaker 12 goes about actually purchasing the media for the 13 Navy under the contracts we've been discussing? 14 MR. PRITCHETT: Objection. Form. 15 THE WITNESS: To an extent as what -- 16 what would be provided in the reco deck, but as 17 far as the detailed execution of how those ads are 18 placed, again, the Navy relies on the expertise of 19 VMLY&amp;R to do that. 20 BY MS. GOODMAN: 21 Q Okay. So the best understand- -- the 22 best representation of the Navy's understanding of</p>
<p style="text-align: right;">Page 51</p> <p>1 BY MS. GOODMAN: 2 Q And thus there's not one between the 3 Navy and WaveMaker, correct? 4 MR. PRITCHETT: Same objections. 5 THE WITNESS: The contract is between 6 VMLY&amp;R and Navy and it's my understanding that 7 WaveMaker is an affiliate of VMLY&amp;R and -- and 8 does that purchasing on their -- on -- on behalf 9 of them. 10 BY MS. GOODMAN: 11 Q On behalf of VMLY&amp;R? 12 A Right. 13 MR. PRITCHETT: Objection. Form. 14 BY MS. GOODMAN: 15 Q And there's no contract between Google 16 and the Navy for purposes of marketing and 17 advertising, correct? 18 MR. PRITCHETT: Objection. Form, 19 foundation. 20 THE WITNESS: Correct, our contract is 21 with VMLY&amp;R. 22 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 53</p> <p>1 how ads are actually purchased is found in the 2 tactical recommendation decks; am I understanding 3 your testimony correctly? 4 MR. PRITCHETT: Objection. Form. 5 THE WITNESS: My testimony is that the 6 Navy's understanding of which vendors to utilize 7 would be laid out in that approved deck, but 8 the -- the method employed to go out and procure 9 the ad would -- would be something that VMLY&amp;R 10 would -- would do themselves. We wouldn't tell 11 them how to do it. 12 BY MS. GOODMAN: 13 Q And is something that is not known to 14 the Navy, correct? 15 MR. PRITCHETT: Objection. Form. 16 THE WITNESS: To an extent. There would 17 be an exception such as our programmatic buying 18 with The Trade Desk. 19 BY MS. GOODMAN: 20 Q What is -- what do you mean by that? 21 A So you're -- you're asking which methods 22 are used to employ -- or which methods are</p>

14 (Pages 50 - 53)

<p style="text-align: right;">Page 86</p> <p>1 in -- or, excuse me, a final invoice adding --    2 ending in Zulu. Like the delivery number will --    3 will end in a Z or Zulu. And that will be    4 indicative of this -- this is the final billing on    5 that.</p> <p>6 Since sometimes rebates come after --    7 after the fact, there can be a delay in when    8 that's -- in when that's happening. So that's one    9 of the reasons that this refund might be    10 occurring, the -- the \$2,500 one.</p> <p>11 I'm sorry, what was your question again?    12 It's -- it's -- it's a very complicated process,    13 but...</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q So you need to go look at the most final    16 invoice in order to know for sure how much money    17 the Navy, in fact, paid to VMLY&amp;R under a    18 particular task order?</p> <p>19 MR. PRITCHETT: Objection to form.</p> <p>20 THE WITNESS: The -- all the invoices    21 would need to be looked at and -- in -- in order    22 to tell what was -- what was paid in total.</p>	<p style="text-align: right;">Page 88</p> <p>1 agency.    2 Q And if you look at her e-mail    3 December 14th, 2022 that's in the middle of the    4 page -- the first page, I want to direct your    5 attention to the third open bullet down beginning    6 "How are recruiting results actually tracked."    7 Do you see that?    8 A Uh-huh.    9 Q Okay. And then there's a sub-bullet,    10 dark bullet, beginning "TNP Analytics."    11 Do you see that?    12 A I do not.    13 Q The --    14 A Oh, yes, yes. "TNP Analytics provides    15 EOM"?    16 Q Yes.    17 A Yeah.    18 Q What is TNP Analytics?    19 A Sure. TNP, and I think I had mentioned    20 this in previous testimony, TNP is an acronym    21 standing for The Navy Partnership, and that    22 originates from when the agency was first brought</p>
<p style="text-align: right;">Page 87</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q And would you also need to look at any    3 refunds issued to the Navy?</p> <p>4 A Yes. If there were any refunds that --    5 that -- that occurred such as these -- and -- and,    6 again, you're -- you're providing me a -- an    7 e-mail with an attachment, but I'm not sure if    8 that was also on an invoice or not, so that's why    9 I'd have to pull up all of those. But -- but yes,    10 that would also have to be looked at.</p> <p>11 Q I'm handing you what's been -- a    12 document that we looked at in your first    13 deposition which we marked in your deposition as    14 Exhibit 60, so I'm going to mark it again as 60,    15 NAVY-ADS-28530 to 31. And this is an e-mail    16 thread that you're on along with Rae Ann Fisch    17 from VMLY&amp;R.</p> <p>18 Who is Ms. Fisch?</p> <p>19 A Ms. Fisch is one of the client    20 engagement folks, group -- well, as her title    21 states here, "Group Director, Client Engagement."    22 She's one of our main points of contact at the</p>	<p style="text-align: right;">Page 89</p> <p>1 on board in 2016. There were multiple affiliates    2 that were -- that were utilized during that first    3 contract, approximately five or six I believe.    4 And rather than -- since some of them had    5 differing e-mails and things like that, they    6 referred to themselves as The Navy Partnership or    7 TNP and that's just kind of carried forward.    8 Q And so The Navy Partnership refers only    9 to people working at the ad agency, VMLY&amp;R, or one    10 of its affiliates; is that accurate?</p> <p>11 MR. PRITCHETT: Objection. Form.</p> <p>12 THE WITNESS: Yes, that's accurate.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q Okay. And then Ms. Fisch writes in the    15 middle of this bullet, "Yet due to the nature of    16 digital marketing channels, optimizations and    17 other advertising strategy adjustments are made in    18 realtime and are optimized based on key KPIs such    19 as Cost per Lead, RFI form completions and Q&amp;I    20 lead trends."</p> <p>21 A I'm sorry, where are you reading that    22 from?</p>

<p style="text-align: right;">Page 90</p> <p>1 Q In the same dark bullet that began "TNP 2 Analytics." It's -- 3 A Oh, okay. Gotcha. 4 Q Do you see where I am now? 5 A Yes. 6 Q Okay. And is it the TNP or members of 7 TNP who conduct the optimizations and other 8 strategy adjustments in realtime? 9 MR. PRITCHETT: Objection. Form. 10 THE WITNESS: So I can't speak with 11 certainty as to the specific instance that 12 Ms. Fisch was referring to when she sent this 13 e-mail back in December 14. But my understanding 14 would be that when she talks about "due to the 15 nature of digital marketing channels," it's 16 referring to the nature of how the longer a 17 campaign runs the more efficient it becomes as 18 machine learning can occur to find out what copies 19 is doing well per whatever the goal is, whether it 20 be cost per click or whatever, and that those 21 optimizations can run the longer that campaign 22 runs.</p>	<p style="text-align: right;">Page 92</p> <p>1 channels"? 2 MR. PRITCHETT: Objection. Form. 3 THE WITNESS: Just as I was describing. 4 Perhaps I didn't say it well, but due to -- for -- 5 for instance, if you put a broadcast T.V. 6 commercial out, like you can't change the content 7 of that, it's out there. You'd have to take it 8 down and reissue. If you put a billboard up, 9 paper billboard up, like a physical billboard up, 10 you couldn't say, well, this one is working, the 11 other one is not, let's take it down. I mean, 12 you -- you could, but it would be a lengthy thing. So, again, my understanding of what she's describing here is due to the nature that, you know, digital marketing allows for you to have multiple copies, multiple audiences that you're targeting with multiple images, and have machine learning run in the background that can then find which one's working and AV test and then realtime optimize the best copy that's working or the best images that are working or the best audiences that are getting you the clicks or whatever the metric</p>
<p style="text-align: right;">Page 91</p> <p>1 BY MS. GOODMAN: 2 Q And does anybody from the Navy sign off 3 on these realtime optimizations before they're 4 performed? 5 MR. PRITCHETT: Objection. Form. 6 THE WITNESS: So, no, in -- in 7 referencing a realtime optimization, I'm -- I'm 8 referencing the machine learning optimizations 9 that happen as -- as an ad is placed in multiple 10 places. So it's a -- it's a -- from my 11 understanding, it's an automated process to where 12 if you allow the campaign to run a longer period 13 of time, the copy that is working, the -- the 14 images that are working providing the best ROI for 15 that are then utilized. So it's like a -- a bunch 16 of AV testing happening at the same time. That's 17 my understanding of how that process works -- 18 BY MS. GOODMAN: 19 Q And what -- 20 A -- without human interference. 21 Q What do you understand her to mean when 22 she says "due to the nature of digital marketing</p>	<p style="text-align: right;">Page 93</p> <p>1 is that you're going after, that that's what she's 2 referencing here saying the key to digital 3 marketing as opposed to out of home or, you know, 4 broadcast, et cetera. 5 BY MS. GOODMAN: 6 Q And is that a feature of digital 7 marketing across multiple kinds of digital 8 marketing such as display, video, social? 9 MR. PRITCHETT: Objection. Form, 10 foundation. 11 THE WITNESS: Yeah, it's my 12 understanding that that type of technology exists 13 in all of those. 14 BY MS. GOODMAN: 15 Q Okay. Okay. You can set that to the 16 side. 17 Does the Navy have an amount of money in 18 mind that it believes would compensate Navy for 19 any alleged harm suffered by Google's 20 anticompetitive -- alleged anticompetitive conduct? 22 MR. PRITCHETT: Objection. Form,</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 106</p> <p>1 through Google's Ad Exchange?      2 A No, we do not.      3 MR. PRITCHETT: Okay. No further      4 questions.      5 MS. GOODMAN: Okay.      6 VIDEO TECHNICIAN: The time is      7 12:08 p.m. We're off the record.      8 (Whereupon, at 12:08 p.m., the      9 deposition of ALLEN OWENS, JR.      10 was concluded.)      11 * * * * *</p> <p>12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 108</p> <p>1 ACKNOWLEDGMENT      2 OF DEponent      3      4 I, ALLEN OWENS, JR., do hereby acknowledge      5 I have read and examined the foregoing pages of      6 testimony, and the same is a true, correct and      7 complete transcription of the testimony given by      8 me, and any changes or corrections, if any, appear      9 in the attached errata sheet signed by me.      10 11 12 13 14 15 16 17 18 19</p> <hr/> <p>20 Date ALLEN OWENS, JR.      21      22 Job No. CS6118347</p>
<p style="text-align: right;">Page 107</p> <p>1 CERTIFICATE OF NOTARY PUBLIC      2 I, SHARI R. BROUSSARD, the officer before      3 whom the foregoing deposition was taken, do hereby      4 certify that the witness whose testimony appears      5 in the foregoing deposition was duly sworn by me;      6 that the testimony of said witness was taken by me      7 in stenotype and thereafter reduced to typewriting      8 under my direction; that said deposition is a true      9 record of the testimony given by said witness;      10 that I am neither counsel for, related to, nor      11 employed by any of the parties to the action in      12 which this deposition was taken; and, further,      13 that I am not a relative or employee of any      14 counsel or attorney employed by the parties      15 hereto, nor financially or otherwise interested in      16 the outcome of this action.</p> <p>17 18</p> <p style="text-align: center;">      19 SHARI R. BROUSSARD      Notary Public in and for the      20 District of Columbia      21      My commission expires:      22 August 14, 2025</p>	<p style="text-align: right;">Page 109</p> <p>1 Katherine Clemons Esq.      2 katherine.clemons@usdoj.gov      3 October 2, 2023      4 RE: United States, Et Al v. Google, LLC      5 9/28/2023, Allen Owens, Jr., Navy 30(B)(6) (#6118347)      6 The above-referenced transcript is available for      7 review.      8 Within the applicable timeframe, the witness should      9 read the testimony to verify its accuracy. If there are      10 any changes, the witness should note those with the      11 reason, on the attached Errata Sheet.      12 The witness should sign the Acknowledgment of      13 Deponent and Errata and return to the deposing attorney.      14 Copies should be sent to all counsel, and to Veritext at      15 erratas-cs@veritext.com      16      17 Return completed errata within 30 days from      18 receipt of testimony.      19 If the witness fails to do so within the time      20 allotted, the transcript may be used as if signed.      21      22 Yours,      23 Veritext Legal Solutions      24      25</p>

28 (Pages 106 - 109)

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1                   A C K N O W L E D G E M E N T  
2                   O F   D E P O N E N T  
3  
4

I, ALLEN OWENS, JR., do hereby acknowledge

I have read and examined the foregoing pages of

testimony, and the same is a true, correct and

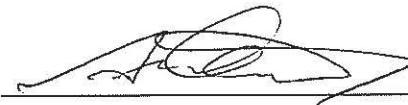
complete transcription of the testimony given by

me, and any changes or corrections, if any, appear

in the attached errata sheet signed by me.

23 OCT 2023

Date



ALLEN OWENS, JR.

Job No. CS6118347

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1 United States, Et Al v. Google, LLC

2 Allen Owens, Jr., Navy 30(B) (6) (#6118347)

3 E R R A T A S H E E T

4 PAGE 8 LINE 3 CHANGE Change spelling of name from

5 Shuntay to Shantay Clarke.

6 REASON Had incorrect spelling.

7 PAGE 10 LINE 10,14,16 CHANGE Change spelling of name from

8 Shuntay to Shantay

9 REASON Had incorrect spelling.

10 PAGE 11 LINE 8,10,18 CHANGE Change spelling of name from

11 Shuntay to Shantay.

12 REASON Had incorrect spelling.

13 PAGE 43 LINE 8 CHANGE issues it to us -- to the Marketing

14 Department within the Navy Recruiting Command

15 REASON More complete answer.

16 PAGE 45 LINE 4 CHANGE change "they're" to "that are"

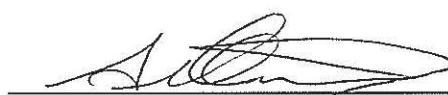
17

18 REASON potential typo or misheard line; this is more accurate

19 PAGE 90 LINE 18 CHANGE "copies" to "copy"

20

21 REASON typo or misheard; 'copy' refers to the words used in an ad

22 

23 23 OCT 2023

24 Allen Owens, Jr. , Navy 30(B) (6)

Date

25

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1 United States, Et Al v. Google, LLC

2 Allen Owens, Jr., Navy 30(B) (6) (#6118347)

3 E R R A T A S H E E T

4 PAGE 91 LINE 16 CHANGE AV to A-B

5  
6 REASON This was misheard; this references A-B testing.

7 PAGE 92 LINE 19 CHANGE AV to A-B

8  
9 REASON This was misheard; this references A-B testing.

10 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

11 \_\_\_\_\_

12 REASON \_\_\_\_\_

13 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

14 \_\_\_\_\_

15 REASON \_\_\_\_\_

16 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

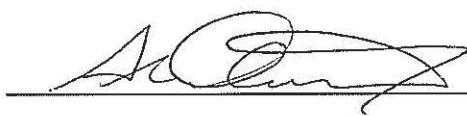
17 \_\_\_\_\_

18 REASON \_\_\_\_\_

19 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

20 \_\_\_\_\_

21 REASON \_\_\_\_\_

22  
23 

23 OCT 2023

24 Allen Owens, Jr. , Navy 30(B) (6)

Date

25